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Llywodraeth Cymru
Welsh Government

Mike Hedges MS
Chair, Legislation, Justice, and Constitution Committee

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27 June 2024

Dear Mike

The Procurement (Wales) Regulations 2024

Thank you for your letter dated 24 June in relation to the Welsh Government's response to the Legislation, Justice, and Constitution Committee's draft report on The Procurement (Wales) Regulations 2024.

As you point out, Welsh Government is developing and implementing a procurement regime for Wales. However we cannot do this in isolation from England due to the significant cross-border procurement activity that occurs between the two nations, and the need for alignment to ensure a procurement regime that is fit for purpose. Contracting authorities, suppliers and other impacted stakeholders need certainty, both legal and practical. That need for certainty has been balanced against developing a new procurement regime for Wales, that will operate alongside equivalent regimes in England and in the rest of the UK.

It is not the case that the Welsh Government has deferred to UK Government during the development of these Regulations. Indeed, our continued close collaboration on the development of our respective procurement regimes has ensured that the Welsh Government played a meaningful, and influential role in the development of the Procurement Act, was actively engaged by the UK Government during the development of their own Procurement Regulations 2024. This has allowed Welsh Government to secure maximum alignment between the new procurement regimes, for the benefit of consumers and suppliers. A better depiction of the relationship would be one of constructive partnership, characterised by a shared focus on the wider long-term opportunities for buyers and suppliers.

In respect of technical reporting points 10 and 11, it is not the case that the UK Government is "giving direction to the Welsh Ministers on what they may or may not make provision for in a Welsh-made statutory instrument". The list of central government bodies in Schedule 2 of the Regulations mirrors the existing list of central government bodies in Schedule 1 of the

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Public Contracts Regulations 2015 (as amended). This was a deliberate decision to ensure that bodies covered by existing legislation continued to be covered by the new legislation.

Historically, the Welsh Government has been unable to amend the names for central government bodies because of the absence of relevant powers in trade legislation to make these amendments. We are actively exploring the feasibility of utilising the powers contained within the Procurement Act to update the list set out at Schedule 2 of the Regulations, whilst simultaneously considering potential risks regarding compliance with international trade obligations. We continue to engage in ongoing discussions with the UK Government in this regard in relation to compliance with our obligations under international agreements. If it is deemed that amendments are legally possible, these will be made via a further Welsh Statutory Instrument at the earliest opportunity.

In relation to the distinction between “Welsh National Health Service Trusts and Local Health Boards” (LHBs) and “Welsh NHS Bodies”, whilst the Procurement Act does not define Welsh NHS Bodies, the term is used elsewhere. Furthermore, the list of central government bodies in Schedule 1 of the Public Contracts Regulations 2015 (as amended) refers to both “Welsh National Health Service Trusts and Local Health Boards” and “Welsh NHS Bodies”, and as noted above, we took a deliberate decision to mirror the existing list in the Procurement (Wales) Regulations to ensure that bodies covered by existing legislation continued to be covered by the new legislation, and to ensure that there is no ambiguity as we move to the new regime.

In respect of technical reporting points 4 and 5, the decisions in each case not to define the terms ‘significant influence’ in regulation 12(7) and ‘concerted practice’ in regulation 13(8) were based on the intended operation of the Procurement (Wales) Regulations. This rightly included consideration of the equivalent drafting adopted by the UK Government in their Procurement Regulations 2024.

Ensuring consistency of approach in the operation of legislation between England and Wales, where that is the intention, is a legitimate consideration. Whilst it would be open to the Welsh Government to define each term in question, the decision was taken that each term should bear its ordinary meaning in the context in which it is to be considered, which WG consider to be clear. In each case the policy decision to align with the UK Government rather than deviate for the sake of deviation was taken. If there was a legitimate and pressing need for each term to bear some other meaning other than their ordinary one, then they could be defined. That was not the determination made.

Should the need arise then further context can be given to stakeholders via guidance and advice, decisions around defining terms, or not doing so, are legitimate questions of policy and legal drafting and do not necessarily impact ‘form or meaning’.

I trust the responses provided are helpful.

Yours sincerely,



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